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May 6, 1996

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William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Federal-State Joint Board on
Universal Service -- CC Docket No. 96-45

Dear Secretary Caton:

The New York State Department of Public Service (NYDPS) submits these reply comments to the initial comments submitted by parties to the Notice of Proposed Rulemaking and Order Establishing Joint Board ("Notice") released March 8, 1996.

Our reply comments focus on the following questions raised in the Commission's notice: (1) whether to eliminate or reduce the carrier common line (CCL) charge and, instead, permit LECs to recover these costs directly from end users through an increase in the subscriber line charge (SLC); (2) whether passage of the Act should change the existing division of responsibility between the interstate and intrastate jurisdictions for contributions to support universal service; (3) whether the states should determine reporting measures necessary to ensure service quality; and (4) whether the states should administer the distribution of universal service funding.[1]

The New York State Department of Public Service supports the Commission in its efforts to decrease the CCL, but we believe that an attendant increase in the SLC is unwarranted. Increases in end user rates should not be necessary in view of changing market conditions. We believe that continued growth in interstate access minutes (if volume growth exceeds cost growth, as it should, then per minute rates should decrease) will

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1. MCI and Teleport raise arguments that certain interconnection arrangements (referred to "pay or play") are inconsistent under the Act. NYDPS will comment on such interconnection arrangements in Docket No. 96-98, where this issue is also being addressed.

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necessarily reduce the per minute cost to the local exchange company and that increasing competitive pressures should create greater efficiencies.[2] Recent telecommunications industry downsizing underscores this point. Finally, changes in market structure, new opportunities and competitive pressures should encourage the incumbents to consider other approaches.

The NYDPS concurs with the initial comments[3] of many parties who oppose the proposal to increase the end user subscriber line charge (SLC). There is no evidence to support an increase in the SLC even were the Commission to determine that interstate carrier common line (CCL) charges should be eliminated or reduced. In fact, at least one party requests that the Commission consider reductions in the SLC because of declining loop costs and increased productivity over the past decade.[4]

Regarding the proposed use of intrastate revenues for an interstate universal service fund,[5] Congress has clearly stated otherwise in the Act. Section 254(d), for example, states categorically, "(E)very telecommunications carrier that provides interstate telecommunications services shall contribute to the specific (universal service fund) established by the Commission." (Emphasis added.) This provision makes no reference either to intrastate services or intrastate carriers. Particularly when read with Section 601(c), it cannot be construed as endorsing the use of intrastate revenue for interstate universal services. Moreover, Sections 601 and 254(d) must be read in concert with

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2. Interstate switched access minutes have exhibited significant and consistent growth since their inception. Continuation of that growth trend would result in additional usage growth of 30% or more over the next five years and would allow a 15-20% decrease in interstate switched access rates from growth alone. Adding continued productivity gains (currently running at about 3% over and above inflation) and transferring competitive risks to access providers could result in another 20% or more in expected price decreases. Full examination of these potential price reductions should precede any consideration of funding access price reductions from local service increases.

3. See, e.g., Comments of National Association of Regulatory Utility Commissioners, p. 3; Florida Public Service Commission, p. 23; Pennsylvania Public Utility Commission; John Staurulakis, Inc., p. 13; American Association of Retired Persons, Consumer Federation of America and Consumers Union, p. 16; Texas Public Utilities Commission, p. 18; MCI Communications Corporation, p. 14.

4. See, e.g., Comments of the Texas Office of Public Utility Counsel, page 14.

5. See, e.g., Comments of the National Cable Television Association and AT&T.

Congress's preservation of Section 152(b). Inasmuch as the Commission remains expressly barred from setting intrastate rates, it cannot simply appropriate intrastate revenues for federal purposes.

In addition, Section 254(d) must be read with Section 254(f) which authorizes each state to adopt regulations consistent with the Commission's own rules on universal services. The same provision specifies that "(E)very telecommunications carrier that provides intrastate telecommunications services shall contribute in a manner determined by the State to. . .universal service in that State." (Emphasis added.) These provisions speak pointedly of Congress's intent to use only interstate revenue support for interstate universal services.

Similarly, the suggestion by MCI[6] that the Joint Board and the Commission somehow create a higher burden for any state that seeks to impose service quality reporting requirements on new entrants (equivalent to those of incumbent LECs), disregards the plain meaning of pertinent provisions in the Act. As MCI's comment itself acknowledges, service quality oversight has historically been the responsibility of the states. Having originally acknowledged (in Section 152(b)) that the states are the appropriate venues for such responsibility, Congress has clearly reaffirmed and preserved this jurisdictional delegation at Section 252(e)(3) of the Act.

The NYDPS supports the initial comments of parties that would authorize the state regulatory commissions to act as administrators of the distribution of universal service funds.[7] As we stated in our initial comments, funds could be distributed to each state in the form of a "block grant." We agree that states are in a better position to establish distribution plans because they possess in-depth knowledge of the local marketplace and can better target areas in need of subsidy. Specifically, state commissions have extensive knowledge of the rate design and cost structure of each local exchange company as well as knowledge of high cost areas, areas of low subscribership, and the degree of competition within the state.

In fact, certain states (e.g., California and Vermont) have established intrastate universal funds and maintain that having state utility commissions perform this role for the Commission could provide for a more seamless targeting of support for universal service.[8] We agree that states should have the flexibility to select a third party administrator of the fund, as

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6. Comments of MCI Communications Corporation, page 21.

7. See, e.g., Comments of Time Warner Communications Holdings, Inc., p. 23.; Comments of Bell Atlantic, p. 10.

8. See, e.g., Comments of the California Public Utilities Commission.

long as oversight is maintained. For example, if a particular state lacks the resources or expertise to act as administrator, an independent third party could be hired, through a competitive bidding process, to collect and distribute the funds. The third party administrator could distribute funds in accordance with state and federal policies, provide annual accounting reports, and hold its records open for state review.

Respectfully submitted,

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